Supreme Court, U.S.
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No.

In the Supreme Court of the United States
October Term, 1997

Bryan L. Beckham, et al., *Petitioners,*

v.

Union Pacific Railroad Co, et al., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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May 1998

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Question Presented

Whether pension plan participants' claims for benefits accrue for statute of limitations purposes when they are told about an event which might affect their rights in the future, or when their claims are denied by a plan fiduciary in the manner set forth in the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 et seq. ("ERISA").

LIST OF PARTIES

Petitioners:

Bryan L. Beckham, Gary K. Bradshaw, William E. Dixon, Mike L. Eudy, Marshall W. Hales, Billy Joe Harmon, James M. Hentschel, Carl W. Holem, James D. Miller, Cecil Rhodes, Jr., Paul J. Richter, and Daniel A. Witte, Individually and on Behalf of All Class Members

Respondents:

Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company and the Missouri-Kansas-Texas System Pension Plan for Non-Agreement Employees, by Ursula Fairbairn, Barbara Schaefer, and James Young, in their capacity as The Pension Committee of the Missouri-Kansas-Texas System Pension Plan for Non-Agreement Employees

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Opinions Below

The opinion of the Court of Appeals appears in the Appendix at 1a and is published at 138 F.3d 325. The District Court's opinions appear at App. 19a and App. 26a, and are unreported.

Jurisdiction

The Court of Appeals decided the case on February 26, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1994).

Statutory Provisions

a. *ERISA § 503, 29 U.S.C. § 1133.* ERISA § 503, 29 U.S.C. § 1133 provides:

> In accordance with regulations of the Secretary, every employee benefit plan shall -

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for the denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

b. *The regulations accompanying ERISA § 503, 29 U.S.C. § 1133 -- 29 C.F.R. § 2560.503-1.* 29 C.F.R. § 2560.503-1 provides, in relevant part:

(a) *Scope and purpose.* - (1) This section sets out certain minimum requirements for employee benefit plan procedures pertaining to claims by participants and beneficiaries (claimants) for plan benefits, consideration of such claims, and review of claim denials, hereinafter referred to in the aggregate as "claims procedures ..."

(b) *Obligation to establish a reasonable claims procedure.* Every employee benefit plan shall establish and maintain reasonable claims procedures.

(1) A claims procedure will be deemed to be reasonable only if it:

(i) complies with the provisions of paragraphs (d) through (h) of this section ...

(d) *Filing of a claim for benefits.* For purposes of this section, a claim is a request for a plan benefit by a participant or beneficiary ...

(e) *Notification to claimant of decision.*- (1) If a claim is wholly or partially denied, notice of the decision, meeting the requirements of paragraph (f) of this section, shall be furnished to the claimant within a reasonable period of time after receipt of the claim by the plan ...

(f) *Content of notice.* A plan administrator ... shall provide to every claimant who is denied a claim for benefits written notice setting forth in a manner calculated to be understood by the claimant:

(1) The specific reason or reasons for the denial.

(2) Specific reference to pertinent plan provisions on which the denial is based:

(3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

(4) Appropriate information as to the steps to be taken if the participant ... wishes to submit his or her claim for review.

(g) *Review procedure*. (1) Every plan shall establish and maintain a procedure by which a claimant ... has a reasonable opportunity to appeal a denied claim to an appropriate named fiduciary ...

(h) *Decision on review* ... (3) The decision on review shall be in writing and shall include the specific reasons for the decision, written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent plan provisions on which the decision is based.

c. *ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)*. ERISA § 502(a)(1)(B) provides:

(a) A civil action may be brought -

(1) by a participant or beneficiary -

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan ...

Statement of the Case

1. *The Statutory Scheme.* The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), is a comprehensive statute designed to protect the rights of plan participants. One of the critical components of that protective scheme is a requirement for detailed review and disclosure by plan fiduciaries whenever an individual participant files a "claim for benefits," defined as a "request for a plan benefit" thereunder. 29 C.F.R. § 2560.503-1(d). See generally ERISA § 503, 29 U.S.C. § 1133; 29 C.F.R. § 2560.503-1. If an individual participant makes a "claim for benefits," the claim must be reviewed pursuant to a "reasonable claims procedure," and if the claim is denied, the participant must be give a written explanation of, *inter alia,* "the specific reason or reasons for the denial" and "specific reference to pertinent plan provisions on which the denial is based." 29 C.F.R. § 2560.503-1(f). Claim denials are appealable to an "appropriate named fiduciary," and if that fiduciary rejects the appeal, the participant must be provided with a written decision which "shall include specific reasons for the decision written in a manner calculated to be understood by the claimant, as well as specific references to the pertinent plan provisions on which the decision is based." 29 C.F.R. §§ 2560.503-1(g)(1) and (h)(3).

At that point, ERISA further protects the rights of participants by allowing them to bring civil actions in federal court to challenge denials of claims for benefits. See ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). The issue in this case is whether participants' rights under this section accrue when a benefit claim is denied pursuant to the procedures set forth in ERISA, or when the participants first become aware of facts which might affect their benefits in the future.

2. *Facts*. Petitioners represent a defendant class of more than 200 former employees of the Missouri-Kansas-Texas Railroad and subsidiaries (together "MKT"). In August 1988, the Union Pacific Corporation ("UPC") acquired MKT. Prior to the acquisition, UPC corporate representatives prepared and distributed a "fact sheet" to MKT employees. App. 39a-50a. The "fact sheet" told MKT employees about UPC's benefit programs, and also announced that UPC did not intend to give to any MKT employee who accepted employment with UPC "credited service" under the Pension Plan for Salaried Employees of Union Pacific Corporation ("UP Plan") for periods of service with MKT. UPC also announced in the fact sheet that, after the acquisition, UPC intended to cease accruals of "credited service" under the Missouri-Kansas-Texas System Pension Plan for Non-Agreement Employees ("MKT Plan"). UPC's "fact sheet" did not, however, interpret either Plan or explain how or why the Plan language supported UPC's intended result. In fact, the "fact sheet" stated:

> The answers provided in this document are designed to provide the employee with a better understanding of his/her Employee Benefit Programs and may not apply to all MKT Railroad Company subsidiaries. <u>However, in all instances, the official plan texts, trust agreements, and/or master contracts with insurance companies, as appropriate, are the governing documents.</u>

App. 50a (emphasis added).

After the acquisition, Petitioners became employed at various times by the Union Pacific Railroad Company ("UPRR"), one of UPC's subsidiaries, continued to participate

in the MKT Plan and also became participants in the UP Plan. On several occasions individual Petitioners attempted to confirm or clarify their rights under the terms of the Plans through inquiries to UPC or UPRR representatives.[1] Having failed to receive any sort of satisfactory response, in late 1993, Petitioners sought legal advice from outside counsel regarding their rights under the Plans.

On February 2, 1994, counsel for the Petitioners sent a letter to UPC suggesting that its administration of the MKT Plan following the acquisition had been improper, and that Petitioners were entitled to additional "credited service" thereunder. Counsel argued that, notwithstanding UPC's apparent intentions at the time of the acquisition, the method by which it had integrated the MKT operations and employees into its own operations created an entitlement to credited service under the terms of the MKT Plan.[2] Counsel also sought information regarding the UP Plan to see whether UPC had also taken the steps necessary to effectuate its pre-acquisition intentions with respect to that Plan. UPC responded by stating that it would treat counsel's letter as a claim for benefits under the MKT Plan, and on March 31, 1994, Respondent MKT Plan

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[1] As the Court is aware, ERISA provides that participants periodically be given certain information about their plan rights and benefits, written in a way that an average person can understand. See ERISA §§ 101(a), 102, and 104(b), 29 U.S.C. §§ 1021(a), 1022 and 1024(b). It is undisputed, however, that, contrary to these requirements, UPC never provided Petitioners with updated information for the MKT Plan, nor did it provide any Petitioner with an explanation of how the UP Plan calculated benefits for former MKT employees.

[2] More specifically, counsel asserted that UPRR, Petitioners' employer after the acquisition, was a "Successor Employer" within the meaning of the MKT Plan, and that employees of Successor Employers are entitled to credited service thereunder.

Committee issued a decision denying Petitioners' claim for benefits under the terms of the MKT Plan.

3. *Proceedings*. On April 1, 1994, Respondents UPC, UPRR, the Missouri Pacific Railroad Company (another UPC subsidiary) and the MKT Plan by the MKT Plan Committee filed a "Class Action Complaint for Declaratory Judgment" against Petitioners seeking a declaration that the failure to give post-acquisition credited service under the MKT Plan was consistent with the terms of the MKT Plan and ERISA. Petitioners asserted a compulsory counterclaim pursuant to Fed. R. Civ. P. 13(a), for additional credited service under both the MKT Plan and the UP Plan. Petitioners' compulsory counterclaim did not challenge UPC's right to amend the MKT and UP Plans as UPC had announced in the "fact sheet," nor did it challenge the "fact sheet" itself, as that document had no legal effect on the Plans. Rather, Petitioners' compulsory counterclaim alleged, on the basis of events and omissions which occurred *after* the acquisition, that Petitioners are entitled to additional pension credits because UPC had never taken the formal actions necessary to amend the Plans to effectuate its pre-acquisition intentions.[3]

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[3] The record contains two memoranda in which UPC officials discussed the need to amend the MKT and UP Plans in order to effectuate its intentions. App. 51a and App. 52a-53a. See also App. 57a-63a. But, the parties agree that UPC never amended the UP Plan to effectuate its intent that Petitioners not receive "credited service" for their MKT Plan participation, and that UPC did not amend the MKT Plan until July 23, 1997 -- nearly nine years after the acquisition and over three years after this suit was filed. App. 64a-66a. But see Inter-Modal Rail Employees Ass'n v. Atchison, Topeka and Santa Fe Ry. Co., 520 U.S. 510, 117 S. Ct. 1513, 1516, ___ L.Ed. 2d ___ (1997) ("[a]n employer may, of course, retain the unfettered right to alter its promises, but to do so it must follow the formal procedures set forth in the plan.")(internal citations omitted).

Respondents moved to dismiss Petitioners' compulsory counterclaim as premature on the theory that Petitioners failed to exhaust their administrative remedies prior to asserting that counterclaim in court. The district court denied that motion, holding that the Eighth Circuit does not require that Plan-related claims be exhausted where, as here, the Plans themselves contain no exhaustion requirement. The district court also declined Respondents' suggestion that Petitioners be required to submit their compulsory counterclaim to a claims review process.[4]

Respondents then filed a motion for summary judgment contending that Petitioners' compulsory counterclaim is time-barred by Neb. Rev. Stat. § 25-505 (1995), Nebraska's five-year limitations period for actions on contracts. The district court granted that motion, concluding that Petitioners' compulsory counterclaim for benefits under ERISA § 502(a)(1)(B) accrued by no later than August 12, 1988, the date of the acquisition. App. 35a-36a. The district court recognized the "general rule in an ERISA action ... that a cause accrues when a 'claim for benefits has been made and formally denied,'" and held that here "there was no formal denial of [Petitioners' compulsory counterclaims] before [Respondents commenced] this litigation." App. 33a. Nevertheless, the district court held that Petitioners' compulsory counterclaim accrued upon their receipt of UPC's "fact sheet" because their injury -- the failure to grant credited service -- began then. App. 35a-36a.

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[4] Notwithstanding the district court's ruling, and during the pendency of litigation, the Plans' fiduciaries construed Petitioners' compulsory counterclaim as a "claim for benefits," and denied the claim in two lengthy decisions dated September 20, 1995.

The Eighth Circuit affirmed. It too recognized that "the general rule in an ERISA action is that a cause of action accrues after a claim has been made and has been formally denied." App. 12a. The court then departed from that general rule, however, holding that the accrual of Petitioners' compulsory counterclaim should be governed by the federal "discovery rule," and the "fact sheet" should have led Petitioners to discover "the injury that is the basis of the litigation." App. 12a, 15a-16a. Thus, the Eighth Circuit concluded that an ERISA claim for benefits can accrue for statute of limitations purposes "even before a claim for benefits is filed," as long as there is a "clear" and "explicit" corporate communication about how a particular corporate event might affect a participant's benefits in the future. App. 6a, 13a, 15a.

Reasons for Granting the Writ

This case presents the Court with an opportunity to resolve a conflict between the Circuits concerning a fundamental question with enormous implications for pension plan participants, sponsors and fiduciaries alike -- when does an ERISA claim for benefits accrue for statute of limitations purposes? Every day corporate officials communicate with plan participants about events which might affect benefits that could be payable years in the future, but until the Eighth Circuit's decision below, no court ever had held that such communications trigger the running of ERISA's statute of limitations. Petitioners urge the Court to issue a writ of certiorari and reaffirm the majority rule that ERISA benefit claims do not accrue until a participant makes a claim, and the claims fiduciary repudiates that claim in a clear written decision which complies with ERISA's requirements. Such a rule is required to ensure the certainty and consistency of plan administration, to protect the courts from an onslaught of

speculative claims, and to enforce the rights of pension plan participants to a full and fair opportunity to contest claims for benefits in the manner intended by Congress.[5]

I. The Ruling Below Conflicts With Numerous Circuit Court Decisions.

The Eighth Circuit held in this case, based on the federal "discovery rule," that ERISA claims for benefits accrue when a company "clearly and explicitly" tells its current or future employees how a particular corporate event may affect their pension benefits in the future. No matter that the company's statement has no legal effect on the plans, Inter-Modal Rail Employees Ass'n v. Atchison, Topeka and Santa Fe Ry. Co., 117 S. Ct at 1516,[6] or that the company could

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[5] The importance of the policy considerations here is underscored by the fact that the United States Department of Labor filed an amicus curiae brief below supporting Petitioners. According to the Department of Labor, the Respondents' theory (now adopted by the Eighth Circuit) "will require participants, and their beneficiaries, who are not yet eligible for retirement benefits, to protect themselves by filing premature court actions based on ambiguous employer statements that may later be construed as binding plan interpretations." Brief for the Secretary of Labor as Amicus Curiae, p. 10.

[6] Thus, even if the "discovery rule" did apply, the Eighth Circuit's decision is still erroneous. Even under the "discovery rule," a claim does not accrue before there has been an unlawful act (and the party bringing the lawsuit discovers an injury resulting from this unlawful act). Tolle v. Carroll Touch, Inc., 977 F.2d 1129, 1139 (7th Cir. 1992)(citation omitted). The Eighth Circuit in this case did not find that UPC's "fact sheet" was itself an unlawful act or that it had an unlawful effect. Nor could the Eighth Circuit make such a finding because ERISA's requirement that pension plans be established, maintained and amended in formal written documents means that the "fact sheet" had no legal effect on the Plans. See, e.g., Moore v. Metropolitan Life Ins. Co., 856 F.2d 488 (2d Cir. 1988); Anderson v. John Morrell & Co., 830 F.2d 872 (8th Cir. 1987)(ERISA plans are not

change its mind the next day or the next week or on ten occasions before the employees retire, or that the company's announcement is inconsistent with the actual pension plan provisions, or that subsequent events might make the statement inaccurate, or that the company has no authority to decide pension plan claims. Plan participants in the Eighth Circuit, even those who may be forty years away from receiving a pension, now have the burden of parsing through each non-fiduciary communication, reading the plan, deciding whether the communication raises issues under some plan term, and quickly filing a lawsuit alleging that the employer's intentions, coupled with other events which might occur in the future, might unfairly affect their rights in the future.

This is a burden which *eight* other Circuits have refused to place on plan participants. The First, Second, Fourth, Fifth, Sixth, Seventh, Ninth and Tenth Circuit Courts of Appeal all have rejected the "discovery rule," holding that an ERISA § 502(a)(1)(B) benefits claim does not accrue until the claim is made and formally denied by a named claims fiduciary in a clear written decision which contains the specific information required by ERISA. Daill v. Sheet Metal Workers' Local 73 Pension Fund, 100 F.3d 62, 66 (7th Cir. 1996);[7] Stevens v.

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subject to amendment as a result of informal communications between an employer and plan beneficiaries); Nachwalter v. Christie, 805 F.2d 956 (11th Cir. 1986).

[7] The Eighth Circuit claims that Daill supports its holding that an ERISA § 502(a)(1)(B) claim for benefits can accrue, and a fiduciary can "clear[ly] and unequivocal[ly]" repudiate the right to plan benefits "even before a claim is filed." Union Pacific Railroad Co. v. Beckham, 138 F. 3d at 330. The Seventh Circuit made no such ruling. Rather, it simply rejected participant's argument that his request for benefits was not a "claim for benefits" because he did not submit a formal application for benefits. The

Employer-Teamsters Joint Council No. 84 Pension Fund, 979 F.2d 444, 451, 453 (6th Cir. 1992) ("An ERISA cause of action for benefits under ERISA does not arise until a claim for benefits has been made and formally denied. Other circuits have uniformly accepted this position.")(citations omitted); Tolle, 977 F.2d 1129 (7th Cir. 1992); Simmons v. Willcox, 911 F.2d 1077, 1081 (5th Cir. 1990); Held v. Manufacturers Hanover Leasing Corp., 912 F.2d 1197, 1205 (10th Cir. 1990); Rodriguez v. MEBA Pension Trust, 872 F.2d 69, 72 (4th Cir. 1989) ("[t]o hold otherwise would require lay participants and beneficiaries to be constantly alert for 'errors or abuses that might give rise to a claim and start the statute of limitations running.'"), quoting Menhorn v. Firestone Tire & Rubber Co., 738 F.2d 1496, 1501 (9th Cir. 1984); Miles v. New York State Teamsters Conf. Pension & Retirement Fund Employee Pension Benefit Plan, 698 F.2d 593, 598 (2d Cir.), cert. denied, 464 U.S. 829 (1983) (claim does not accrue until "there has been a 'repudiation by the fiduciary' which is clear and made known to the beneficiaries.'") (internal quotations omitted); Jenkins v. Local 705 Int'l Bhd. of Teamsters Pension Plan, 713 F.2d 247, 254 (7th Cir. 1983); Quinn v. Country Club Soda Co., 639 F.2d 838, 840 (1st Cir. 1981) ("[n]umerous cases stand for the logical proposition that a cause of action for wrongful denial of pension plan benefits does not accrue until a request for benefits is denied.") (citations omitted); Paris v. Profit Sharing Plan for Employees of Howard B. Wolf, Inc., 637 F.2d 357, 361 (5th Cir. 1981) (cause of action under

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court found that the participant's written claim for pension benefits directed to the fund's trustees -- the writing that the plan itself requires - was a "claim for benefits" and that the participant's claim accrued when the plan's trustees issued a formal and final denial of his appeal. Daill, 100 F.3d at 65-66.

ERISA § 502(a)(1)(B) does not accrue until trustees interpret plan to deny benefits).

Many of these cases expressly rejected the argument accepted by the court below -- that representations about a participant's benefit prior to formal denial by a plan fiduciary trigger claims accrual for statute of limitations purposes. In Menhorn, 738 F.2d at 1501, for example, the Ninth Circuit rejected the argument that the participant's claim for additional pension service credits accrued in 1967, when the participant was told that his resignation from Firestone would cause him to lose the pension service credits in question. Instead, the Ninth Circuit held that the participant's claim accrued in 1980, when the plan fiduciary formally denied his claim for benefits and told the participant why the Plan did not provide for the credits he sought. Similarly, the Fourth Circuit in Rodriguez, 872 F.2d at 71-72, expressly rejected the theory that a participant's claim accrued a year before the trustees' decision, when the participant first made his claim, or thirteen years before, when the Trust administrator (as opposed to the claims fiduciary) advised Rodriguez that he had no right to future pension accruals. And, in Miles, 698 F.2d at 598-599, the Second Circuit held that the participants' claim accrued when they received clear notice that the claims fiduciary repudiated their claim by denying them a pension, and not seven years earlier when their representatives were told, and they were put on notice, as to how the fiduciaries intended that their service be credited under the plan. See also Quinn, 639 F.2d at 840-841 (plaintiff's cause of action did not accrue until he retired and claimed benefits from plan despite the fact that a plan trustee and company president had told plaintiff sixteen years before how he would be treated).

Unfortunately, it now appears that the Eight Circuit's decision here is not an aberration in that court. A subsequent panel has cited the decision as precedent for the proposition that the "discovery rule" determines when a claim accrues for statute of limitations purposes in ERISA claims cases. See Bennett v. Federated Mut. Ins. Co., 1998 U.S. App. LEXIS 6543 (8th Cir. 1998). Thus, the Circuits will remain at odds unless this Court moves quickly to resolve the conflict.

II. The Ruling Below is Inconsistent With ERISA's Statutory Provisions.

The Eighth Circuit's embrace of the "discovery rule" in ERISA claims cases places the burden on participants to figure out for themselves whether a plan sponsor's representations are consistent with the statute or the terms of the plan. As the Court can see, the UPC "fact sheet" did not tell the Petitioners why they would not have additional credited service; in particular, there was no explanation of which Plan provisions would dictate that result. On the contrary, UPC told Petitioners that that might not happen at all if they worked for certain MKT subsidiaries, and in any event, they would have to figure it out for themselves since "in all instances, the official plan texts, trust agreements, and/or master contracts with insurance companies, as appropriate, are the governing documents." App. 50a.[8]

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[8] As noted, the factual underpinnings of Petitioners' claim -- their employment with a "Successor Employer" within the meaning of the MKT Plan and the failure of UPC to follow through on its intention to amend the Plans -- had not even happened when the "fact sheet" was circulated. See p. 7 and n. 2, supra. Thus, the Eighth Circuit has held here that the Petitioners' claims accrued before the facts which entitle them to relief had even occurred. But cf. Ohio Forestry Ass'n v. Sierra Club, 1998 U.S. LEXIS 3101 at *13-*18 (1998) (holding that an unimplemented United

It is quite clear that UPC never intended its "fact sheet" to be an official plan interpretation, much less a claims denial within the meaning of ERISA. It is not written in a manner calculated to be understood by the plan participant, nor does it contain specific information including "[t]he specific reason or reasons for the denial" and "[s]pecific reference to pertinent plan provisions on which the denial is based." 29 C.F.R. § 2560.503-1(f). See also 29 C.F.R. § 2560.503-1(h)(3) (requirements for decision on review); Booton v. Lockheed Med. Benefit Plan, 110 F.3d 1461, 1463 (9th Cir. 1997)("There is nothing extraordinary about this [regulation]; it's how civilized people communicate with each other regarding important matters."); Halpin v. W.W. Grainger, Inc., 962 F.2d 685, 689, 693 (7th Cir. 1992).

Congress did not intend that plan sponsors could circumvent the claims procedure by issuing announcements that, at best, put participants on notice that their benefits might be wrongly calculated when they retire. No one could read ERISA's provisions and conclude that Congress intended to put the burden on plan participants to try to "discover" how a company's communications about particular corporate events might someday interplay with complicated plan provisions and impact their pension rights. Rather, ERISA places the burden on plan administrators and claims fiduciaries to tell participants in a clearly written explanation exactly why the actual plan provisions do not provide for the claimed benefits. That, and

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States Forest Service land and resource management plan is not ripe for judicial review because, among other things, it "do[es] not command anyone to do anything or to refrain from doing anything . . . [it] create[s] no legal rights or obligations" and because "the possibility that further consideration will actually occur before the Plan is implemented is not theoretical, but real" (internal citations ommitted).

not a conclusory written notice like UPC's "fact sheet," is the sort of "repudiation by a fiduciary which is clear and made known to the beneficiaries" which has been held time and again as necessary to "accrue" an ERISA § 502(a)(1)(B) benefits claim for statute of limitations purposes. See, e.g., Miles, 698 F.2d at 598.[9]

III. The Ruling Below Is Inconsistent With Sound Pension Policy.

The majority rule that ERISA § 502(a)(1)(B) claims for benefits do not accrue until a plan fiduciary has formally repudiated a claim protects the rights of plan participants while ensuring that the courts and plan sponsors will not be burdened with multiple and premature benefit actions. In particular, the majority rule prevents unfairness to participants, particularly young employees, who simply "cannot be expected to inquire about benefits until retirement." Stevens v. Employer-

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[9] Significantly, the courts have also concluded that the "discovery rule" does not apply to claims under ERISA that a fiduciary has breached its duties to a plan participant, reasoning that a claim does not accrue upon notice of the wrong, but rather when the participant gains actual knowledge of how the fiduciary's conduct violates the law. See Wolin v. Smith Barney Inc., 83 F.3d 847, 854-855 (7th Cir. 1996) (rejecting the federal "discovery rule" and holding that the statute of limitations in an ERISA breach of fiduciary duty case "does not begin to run until the plaintiff knows everything that he needs to know in order to sue...."); Maher v. Strachan Shipping Co., 68 F.3d 951, 954 (5th Cir. 1995)(actual knowledge of a violation under ERISA "requires a showing that plaintiffs actually knew not only of the events that occurred which constitute the breach or violation but also that those events supported a claim.")(internal quotation omitted); Waller v. Blue Cross of Calif., 32 F.3d 1337, 1341 (9th Cir. 1994)("[t]he disclosure of a transaction that is not inherently a statutory breach ... cannot communicate the existence of an underlying breach")(internal quotation omitted).

Teamsters Joint Council, 979 F.2d at 451, quoting Rodriguez v. MEBA Pension Trust, 872 F.2d at 72. Certainly participants cannot be expected to anticipate the scores of corporate events which might occur that could interact with their individual work experiences to alter the effect of a particular corporate promise or event on his benefits. Indeed, in this case, Petitioners allege that their entitlement to additional pension credit is based on corporate acts that occurred *after* the dissemination of the "fact sheet" in August, 1988.[10]

In contrast to the bright-line test of the majority rule with its genesis in the claims review provisions of ERISA, the Eighth Circuit's ad hoc position would create enormous uncertainty for employees and employers. Requiring participants to file a lawsuit on the basis of representations made decades before retirement, as the Eighth Circuit has done here, no doubt will "burden the judicial system with multiple and premature actions" and "result in a great waste of judicial resources ...[by] [r]equiring piecemeal challenges before an actual denial has occurred." Rodriguez v. MEBA, 872 F.2d at 72; Paris v. Profit Sharing Plan, 637 F.2d at 361. See also

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[10] Ironically, an Eighth Circuit case from 1979 perhaps most convincingly explains why its new rule is so unfair. In Winer v. Edison Bros. Stores Pension Plan, 593 F.2d 307, 312 (8th Cir. 1979), the court stated:

> Automatic forfeitures [prior to a formal claims denial] ... would place intolerable burdens on employees. They would be required to constantly oversee operations of pension committees in order to protect themselves against abuses and errors that could pass unnoticed. Otherwise, they would risk losing their cause of action years before they applied for pension benefits. This is inconsistent with the remedial purposes of ERISA.

Menhorn v. Firestone Tire & Rubber Co., 738 F.2d at 1500, n.3 and 1501. As the Court said in Morgan v. Laborers Pension Trust Fund for Northern California, 433 F. Supp. 518, 522 (N.D.Cal. 1977):

> One might argue that the real wrong committed against plaintiffs occurred not on the date that their applications [for benefits] were denied, but on the date that their prior pension credit was automatically cancelled due to a break in service, or the date on which their service hours were first calculated unfairly or erroneously... While this "date of original wrong" argument has some merit, the Court must reject it for a number of reasons... Requiring piecemeal challenges before an actual denial has occurred would also result in a great waste of judicial resources. Plaintiffs would file separate actions each time an alleged wrong occurred, rather than consolidating all claims in a single suit after their pensions were denied... The "date of original wrong" rule would also saddle courts with the extremely difficult task of determining exactly when abuses like errors in computation took place, compared to the simplicity and certainty of using the date that the pension application was denied.

Conclusion

The question presented here -- when an ERISA pension plan participant's claim for benefits accrues for purposes of ERISA § 502(a)(1)(B) -- affects employers, pension plans and employees throughout the nation. The Eighth Circuit's use of

the federal "discovery rule" to answer this question places it in a conflict with eight other circuits, and with ERISA's basic statutory protections, and creates enormous uncertainty for plan administration. We urge the Court to issue a writ of certiorari to resolve the conflict and to avoid confusion, harm and mischief in this important area of law.

Respectfully submitted,

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